

Some Comments on the MACC Taskforce on Dugong and Marine Turtle Populations' Draft 'Sustainable and Legal Indigenous Harvest of Marine Turtles and Dugongs in Australia - A National Approach'

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This submission makes some brief comments on the Draft 'Sustainable and Legal Indigenous Harvest of Marine Turtles and Dugongs in Australia - A National Approach' developed by the MACC Taskforce on Dugong and Marine Turtle Populations in consultation with Indigenous communities and stakeholders. We do this from a very particular perspective, as policy researchers at the Australian National University's Centre for Aboriginal Economic Policy Research (CAEPR) in Canberra.

Since its establishment in 1990, CAEPR has undertaken considerable research on Indigenous economic development and policy issues, including the exploration of options for Indigenous Australians to build sustainable regional economies. One of those options is through the sustainable harvesting of wildlife for both customary and commercial use. The viability of this option seems to be enhanced by s.211 of the *Native Title Act 1993* (Cth) which suggests that customary use rights in resources are a common law right, a view reinforced by the *Yanner v Eaton* (1999) High Court decision.

In the past, CAEPR researchers have published on a number of issues of significance to the issue of the Indigenous harvest and cooperative management of wildlife (Altman & Allen 1991; Altman, Bek & Roach 1996; Altman, Roach & Liddle 1997; Altman & Cochrane 2003). We have a particular research interest in the potential significance of the Indigenous customary economy, which incorporates the harvest of wildlife for subsistence use, as well as the interactions between the customary, market and state sectors of the 'hybrid economy' in terms of exploring sustainable development options for Indigenous Australians (Altman 2005; Altman and Whitehead 2003).

We believe there are a number of positive elements in the Draft 'Sustainable and Legal Indigenous Harvest of Marine Turtles and Dugongs in Australia: A National Approach' (the Draft), including recognition that there are a wide range of human and non-human induced mortality factors for these species, one of which is Indigenous harvesting; that any effective species management will require a holistic approach that addresses all these factors; and that under s.211 of the *Native Title Act 1993* (Cth) Indigenous Australians who have determined native title rights or are registered claimants have a customary right to harvest these species for non-commercial purposes. The Draft's six broad management goals and many of its specific objectives and possible actions are worthy of consideration. From the perspective of Indigenous stakeholders there are, in our view, some broad problems with the Draft.

General Comments

1. The Draft's stated objective (p.5) is 'to ensure the conservation and protection of marine turtles and dugongs'. However, this cannot be done by a focus on Indigenous harvest alone. It is correctly argued in the Draft that as these are migratory species, unsustainable harvest or other threats in one location might impact on harvest and/or population sustainability elsewhere. This suggests that a holistic approach needs to be taken both spatially and inclusive of all threats. It is imperative that the relative impact of each threat is rigorously assessed and that inter-linkages between them are assessed for a suitably targeted response.
2. The Draft appears to place greater emphasis on Indigenous harvest as a threat than on Indigenous community-based management as an opportunity for a holistic approach to the monitoring, management and sustainable harvest of these species across northern Australia.
3. The Draft does not take the opportunity to make up for shortfalls in Recovery Plan for Marine Turtles in Australia in terms of adequate recognition of, and support for, the involvement of Indigenous communities in monitoring and management of marine turtles and dugongs and threats to these species.
4. Given that the Draft acknowledges the absence of hard data (Goal 1: Improve the information base) it appears presumptuous in viewing Indigenous harvest as a threat on a national scale.
5. The emphasis on 'legal' Indigenous harvest in the title of the Draft may be seen as unnecessarily confrontational or accusatory.
6. The Draft states that it is important that the approach is carried out in partnership with Traditional Owners. However, Traditional Owners do not appear to be true partners in the development of the National Approach. The membership of the MACC Taskforce set out on page 5 suggests that there is no formal role for Indigenous stakeholders beyond the TSRA which is a good but inadequate start to a proposed partnership approach.
7. Significant issues relating to funding, resourcing, training and capacity building of Indigenous communities are raised by the Draft though little detail is provided as to where this is going to come from and how it will be accessed by Indigenous communities. A national approach faces a major challenge in coordinating management across a large number of remote and under-resourced (especially in the area of natural and cultural resource management) Indigenous communities and regions.
8. Most complex is the treatment of s.211 of the Native Title Act, clearly an emerging area of case and common law that the MACC Taskforce is tentative on. On the positive side the Draft appears to recognise the subsidiarity of other statutes to s.211 of the Native Title Act (post Yanner v Eaton) and yet it hints that this may not be the case under the Great Barrier Reef Marine Park Zoning

Plan 2003 (p6). Surely the MACC could seek legal opinion on this. Elsewhere (e.g. p2) there is reference to Indigenous communities with determined native title rights. However, it is actually Prescribed Bodies Corporate, comprising individual native title holders who hold such rights. In reality, Indigenous communities in post-colonial Australia are made up of a diversity of people and it is practically impossible to distinguish those with native title rights from others who might be affinal (by marriage) or consanguineal (by blood) kin or migrants (historical people) who may not hold native title rights under the western Native Title Act framework, but who may have such rights under customary (that is Indigenous) law or convention today. This is obviously a complex area, but the Draft appears to continually seek to pay lip service to s211, while also wanting to dismiss it if it interferes with its primary role of ensuring species survival.

Specific comments

9. On page 1 it is stated that the Draft has been developed in consultation with Indigenous communities and stakeholders. The Draft would benefit from revealing some of the feedback from this preliminary consultation in terms of how it influenced the Draft's content. It would also be useful to give some idea of the extent of the preliminary consultation and provide greater transparency as to who 'other stakeholders' may be.
10. In many places the Draft refers to the 'cultural, spiritual and economic importance' of these species to Indigenous Australians (e.g. p4). The relegation of the economic to the third of three broad factors is problematic within a wider society that generally values the economic as primary. For example, when farmers are provided with drought relief this is usually for economic and cultural reasons. These species are of fundamental importance to Indigenous livelihoods in some contexts and the economic should not be relegated. (see also Goal 4, p19).
11. The terms 'traditional' and 'customary' are used interchangeably and at times cause confusion. For example, at page 4 it is stated that 'Indigenous hunting of marine turtle and dugongs is traditionally managed through customary law'. It appears that here traditional is referring to past practice, with a subsequent suggestion that this would have been sustainable. There is no doubt that disruption of Indigenous culture may be a challenge to contemporary management, with culture here referring to the values and beliefs that are shared by a group and inform everyday (in this case harvesting) practice. What is important though is the relative impact of this compared with other threats as noted above.
12. On pages 5 and 9 the terms 'charismatic' and 'iconic' appear to be out of place under a heading of 'Biology, legal status and threats of the species' and somewhat emotive in the context of 'the need to act to save these iconic and charismatic species before time runs out'. There is no mention here of their biodiversity or conservation value. An upfront statement regarding non-Indigenous and ecological values of these species would perhaps allow the Draft to provide a better context in which to use these terms.

13. On compliance (at p8) as it is not clearly established what illegal Indigenous harvesting might constitute (unless the reference here is to commercial harvesting which is illegal) then it is unclear what needs to be pursued.
14. At page 9, the Draft recognises the need for jurisdictions to cooperate with each other and with Indigenous communities in a meaningful and useful manner. However, this cooperation is not addressed in any of the six goals. Such coordination and cooperation is one of the biggest challenges facing a national approach and is of particular importance given the migratory nature of the species. Too little emphasis is placed on the responsibilities of the State, Territory and Commonwealth governments in the Draft, as opposed to the responsibilities placed on Indigenous communities.
15. At page 14, the integration of Indigenous and non-Indigenous knowledge and management is important, but it can also be highly contested. It is more honest to recognise this contestation between Indigenous knowledge and western science than to ignore it.
16. At page 19, the access to protein argument and the encouragement of alternate business ventures is a little gratuitous. If people have sound economic, social and cultural reasons and preferences for harvesting these need to be respected.
17. At page 21, we are not aware of communities where pseudo-hunting is undertaken for cultural reasons in Australia. While the argument for pseudo-hunting for research purposes is sound, it would be interesting to get community feedback on this. It is important to acknowledge, as the Recovery Plan for Marine Turtles in Australia does, the significance of capture, butchering and distribution; the economic, social and cultural importance of these practices; and their role in building social and community capital. If harvest is driven by economic, social or cultural uses that ultimately entail distribution and consumption then the use of non-lethal techniques may have very little appeal. It is perhaps more important to ensure that harvesters are educated as to how to selectively harvest in ways which promote sustainability, whether using Indigenous or non-Indigenous knowledge or a combination of both. Although this is discussed under Goal 5, it does not form an objective or a possible action.

Concluding comments

18. Overall, the draft paper does not, in our view, acknowledge clearly enough how complex the task at hand is, especially in terms of coordinating monitoring and management over vast coastline distances, the uncertainty and contestability around causes of mortality, and the potential murkiness in property rights in dugong and marine turtles.
19. The tenor of the Draft appears to favour regulation of alleged unsustainable or 'illegal' Indigenous harvest, but says very little about holistic management which involves Indigenous communities in activities which address harvesting alongside other species threats.

20. The most positive element of the Draft is Goal 6 where there is some innovation and potential to empower Indigenous stakeholders to become actively engaged in regional and community-based species monitoring and management. Of course addressing issues like 'illegal' harvest will not be straightforward for Indigenous regulators (as it is not for other authorities) but the development of Indigenous forms of species governance with appropriate resourcing and recognition could provide a very positive model to deal with a complex problem. A crucial issue here is whether Indigenous resource managers will be empowered to deal with other threats, which takes us back to the crucial first order issue of how species threats are ranked and which require most effort to address.

Key Recommendations

21. That the primary focus of the Draft be sustainability as opposed to a combined focus on sustainability and legality. A sustainable harvest, whether legal or not, may ensure conservation and protection of the species, but not vice versa. This is a particularly worth noting in view of s.211 of the *Native Title Act 1993* (Cth).
22. That the Draft's title and content be amended along the lines of 'Indigenous Involvement in the Monitoring, Management and Sustainable Harvest of Marine Turtles and Dugongs in Australia: A National Partnership Approach' including additional goals, objectives and possible actions for community-based management which cover monitoring and management of populations and threats.
23. That the MACC Taskforce, using the Recovery Plan for Marine Turtles in Australia as a base, identify ways in which Indigenous communities can contribute to achievement of Recovery Plan specific objectives and the carrying out of its prescribed management and research actions. This would include recognising Indigenous people's realised and potential roles as managers alongside lead government agencies which are largely ignored by the Recovery Plan.
24. That the Draft provide greater clarity as to what is 'illegal harvest' under each piece of legislation within each jurisdiction in the light of s.211 of the Native Title Act.
25. That the National Approach develop and be allocated a budget (as per the Recovery Plan for Marine Turtles in Australia) which will allow implementation of the actions needed to achieve its goals.
26. That the National Approach, as per Goal 4, Objective 2 and in view of the fact that stable funding remains a fundamental problem for community-based management of natural and cultural resources by Indigenous Australians, provide ongoing support for Indigenous employment programs (e.g. Sea Rangers) and establish permanent collaborative arrangements with government agencies to ensure continuity of funding and employment.

References

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